UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal Docket No.
	:	3:04 CR 305 (CFD)
MOHAMMED AMIN UL ISLAM	:	

RULING ON REQUEST FOR A HEARING

On October 13, 2004, the defendant, Mohammed Amin Ul Islam, was indicted by a federal grand jury for misuse of a passport, in violation of 18 U.S.C. § 1544. On November 10, 2004, the defendant filed a motion to suppress any statement made by him, and which the government intends to introduce at trial, on the ground that "such statements were obtained in violation of the Fifth Amendment's privilege against self-incrimination, and were the product of coercion and thus violated the Fifth Amendment's Due Process Clause." In addition, the defendant requested an evidentiary hearing pursuant to 18 U.S.C. § 3501(a). The government opposes the defendant's request for a hearing, as well as the substantive requests set forth in the motion.

An evidentiary hearing on a motion to suppress "ordinarily is required if the moving papers are sufficiently definite, specific, and nonconjectural to enable the court to conclude that contested issues of fact going to the validity of the search are in question." United States v. Pena, 961 F.2d 333, 339 (2d Cir. 1992) (citations and quotations omitted). A defendant seeking a hearing on a suppression motion bears the burden of showing the existence of disputed issues of material fact. Id. at 338. The government contends that, in this case, Islam's failure to provide an affidavit setting forth the factual circumstances supporting his claim that the was subjected to a

custodial interrogation eliminates the need for a suppression hearing.[1] (Gov. Supp. Brief at 2-3). In Pena, the Second Circuit stated that a hearing ordinarily is required if "the moving papers are sufficiently definite, specific, and nonconjectural to enable the court to conclude that contested issues of fact going to the validity of the search are in question." Id. (emphasis added). In regard to motions to suppress statements, the Second Circuit has added:

> There are of course other grounds for suppression that depend not on the occurrence of discrete observable acts but on the characterization of a set of circumstances, such as the existence of probable cause for arrest or the voluntariness of a statement, as to which a conclusory statement is not sufficient to require a hearing. A bald assertion that a statement was involuntary, for example, could be based on any of a number of factual premises such as coercion, lack of Miranda warnings, or lack of competence. Without specification of the factual basis for such a characterization, the district court is not required to have a hearing.

United States v. Mathurin, 148 F.3d 68, 69 (2d Cir. 1998) (emphasis added).

Here, the defendant has not made a "bald assertion that a statement was involuntary," as both his motion to suppress and accompanying memoranda indicate the specific factual premises upon which his motion is based–namely, a violation of his right against self-incrimination, Miranda v. Arizona, 384 US 436 (1966) and his due process right against coercion. Lynumn v. Illinois, 372 US 528 (1963). More specifically, the moving papers state that the defendant and a young boy were stopped at the airport in Bangladesh and their passports were seized by a Canadian embassy official. Two days later, the defendant and a young boy appeared at the U.S. Consular's Officer to reclaim the passports. The Canadian official, who was present at that time,

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[1]The government does not argue that a request for a hearing on a motion to suppress that is unsupported by an affidavit must be denied. Rather, the government merely argues that "a motion to suppress not supported by an affidavit by someone with personal knowledge of the facts may be properly denied without a hearing." (Emphasis added).

opined that the young boy with the defendant was not the same boy with him previously at the airport. The U.S. and the Canadian official then "interrogated [the defendant] as to whether he had attempted to transport another child using his son's passport. According to the government's evidence, [the defendant] allegedly admitted that he was transporting a relative's son using his own son's passport. [The defendant] supposedly made this confession orally and in writing." The moving papers allege that the defendant was never informed of his Miranda rights before his "interrogation," and that his statements were the result of coercion. Because the moving papers of the defendant are sufficiently definite, specific, and nonconjectural to enable this Court to conclude that contested issues of fact going to admissibility of the statements are in question, the Court finds that a hearing is warranted.[2] See United States v. RW Prof'l Leasing Servs. Corp., 317 F.Supp.2d 167, 174-77 (E.D.N.Y. 2004) (defendants made a sufficient factual showing to warrant a hearing on their motions to suppress); U.S. v. Bedell, 303 F.Supp.2d 120, 123 (E.D.N.Y. 2004) ("because Bedell unambiguously states that his Miranda rights were not read to him before being interrogated, the Court finds that a hearing is warranted to make the necessary factual findings"). The fact that the defendant also has alleged that his statements were the result

[2]Miranda's exclusionary rule only applies when officers elicit admissions by questioning a suspect who is "in custody." Oregon v. Mathiason, 429 U.S. 492, 495 (1977). Custody is a flexible concept, which does not require a defendant actually be handcuffed or behind bars. See Orozco v. Texas, 394 U.S. 324, 326-27 (1969) (holding that under certain circumstances, suspect can be in custody under Miranda in his own home). Rather, a suspect is in custody for Miranda purposes when, as in Miranda itself, the circumstances of the interrogation "exert[ ] upon a [suspect] pressures that ... impair his free exercise of his privilege against self-incrimination." Berkemer v. McCarty, 468 U.S. 420, 437 (1994), or, in other words, when the "suspect's freedom of action is curtailed to a 'degree associated with formal arrest.' " Id. at 440 (quoting California v. Beheler, 463 U.S. 1121, 1125(1983)). In granting the defendant's request for a hearing, the Court expresses no opinion on whether the defendant was in custody for purposes of Miranda at the time of the alleged statements. That issue will be addressed at the hearing.

of coercion, which often is closely intertwined with issues of proper Miranda warnings, further counsels in favor of a hearing. See, e.g., U.S. v. Anderson, 929 F.2d 96 (2d Cir. 1991) (addressing statements suppressed for Miranda violations and for police coercion).

To the extent the defendant's motion **[Doc. # 22]** requests an evidentiary hearing, it is **GRANTED**. Due to the location of the witnesses involved in this case, which centers on the defendant's alleged misuse of a United States passport in Bangladesh, the hearing will be held shortly before the start of the trial, the date of which will be set in consultation with the attorneys for both parties.

SO ORDERED this 9th day of May 2005, at Hartford, Connecticut.

/s/ CFD
CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE